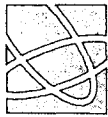


# **Exhibit E**



C.J. Rosenbaum, Esq.  
**Amazon Sellers Lawyer.com**  
Lawyers For Sellers

NEW YORK LONDON SHENZHEN

**Cory J. Rosenbaum, P.C.**

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New York, NY 10120

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April 28, 2017

CSC Services of Nevada  
c/o Amazon Services, LLC  
2215-B Renaissance Drive  
Las Vegas, Nevada 89119

**Via US Mail**

American Arbitration Association Case Filing Services  
1101 Laurel Oak Road, Suite 100  
Voorhees, NJ 08043

**Via US Mail**

**Re: Call of Deals v. Amazon: Demand for Arbitration**

Dear Corporation Service Company and American Arbitration Association:

This law firm represents the owner and operator of the CallofDeals Inc storefront (Email: [amazon@callofdeals.com](mailto:amazon@callofdeals.com)) on the Amazon platform (hereinafter, CallofDeals). On behalf of CallofDeals, I am writing to request arbitration to resolve a dispute between my client and Amazon Services, LLC ("Amazon") pursuant to § 18 of the Amazon Participation Agreement ("Agreement"); a copy of which is enclosed, together with a check for the applicable \$750.00 initial filing fee. Pursuant to the Agreement, I am sending this Demand to Amazon's agent, Corporation Service Company.

Our client is a well-established company based in New York with a total of twelve employees. Our client has been doing business for many years with reputable retailers, and, on the Amazon platform alone, they have averaged between \$4 million in annual revenue on Amazon alone and has been selling on other platforms such as Ebay, Walmart, Jet.com, and Rakuten as well. As an Amazon Seller for several years, they have become very knowledgeable concerning Amazon's policies for sellers and they have maintained excellent metrics and a high sales volume on the Amazon platform.

Within the past 30 days prior to the removal of their selling privileges on Amazon.com, our client has sold approximately 4,246 units of authentic Beats brand products. Of those units, 1,871 were sold against two ASINs that received inauthentic complaints which led to the suspension of our client's entire business on the Amazon platform. Within those last 30 days, the sale of these two items alone amounted to over \$325,000.00 in revenue for our client's business, and over \$60,000.00 for Amazon. However, even though our client has proven the authenticity of these items and, further, cooperated with all of Amazon's requests for information, their selling privileges remain suspended, and the Amazon Seller Performance team has become unresponsive.

**ATTORNEYS**

C.J. Rosenbaum, Esq.  
Anthony Famularo, Esq.

**PARALEGALS**

Kerry McDonald Robert Segal  
Vincent Famularo Alex Maghione

**PUBLIC  
RELATIONS**

Lisa Belman

**SHENZHEN  
OFFICE MANAGER**

Cherish Mei

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**Amazon Sellers Lawyer.com**  
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### Timeline

On or about December 19, 2016, our client received notice from Amazon's Seller Performance team that their selling privileges had been suspended due to inauthentic complaints. Since that date, our client has submitted multiple plans of action with invoices and ample documentation proving the authenticity and supply chain for products in question.

Although our client has appealed their suspension with sufficient proof of authenticity and multiple plans of action to prevent future inauthenticity issues, Amazon has failed to reinstate our client's selling privileges. As a result of this failure, our client continues to lose substantial revenue daily.

### Nature of the Claim:

Pursuant to the aforementioned performance notifications, our client has fully complied with the process that Amazon requires for settling authenticity disputes, including the provision of adequate proof of authenticity and supply chain.

### Amount in Dispute:

Projected sales and lost profits averaging \$10,000 per day in sales, totaling approximately \$1,000,000 in projected sales per fiscal quarter.

### Relief Sought

The immediate reinstatement of all previously held seller privileges for the CallofDeals storefront on Amazon.com, together with damages, including lost profits, in an amount no greater than \$75,000.00

### Requested Hearing:

In person, at **AAA New York Midtown Hearing Location**, 150 East 42<sup>nd</sup> Street Floor 17, New York, NY 10017.

I look forward to hearing from you and remain.

Cordially Yours,  
C.J. Rosenbaum  
(electronically signed)  
Cory Jay Rosenbaum, Esq.

#### ATTORNEYS

C.J. Rosenbaum, Esq.  
Anthony Famularo, Esq.

#### PARALEGALS

Kerry McDonald    Robert Segal  
Vincent Famularo    Alex Maghione

#### PUBLIC RELATIONS

Lisa Belman

SHENZHEN  
OFFICE MANAGER  
Chenish Mei

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EN ▾

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1

[Cart](#)

## Selling at Amazon.com

[Policies and Agreements](#) > [Participation Agreement](#)[Hello, September ASL](#) | [Sign out](#)

### Topics

#### Search Help:

Enter a keyword or topic

#### Search Seller Help

### Seller Support

[< General Help](#)

#### Policies and Agreements

[Amazon Currency Converter for Sellers Terms and Conditions](#)[Fees and Pricing](#)[Selling Policies](#)[Product Guidelines](#)[Category, Product, and Listing Restrictions](#)[IRS Reporting Regulations on Third-Party Payment Transactions](#)[Tax Calculation Services Terms](#)[Amazon Anti-Counterfeiting Policy](#)[FBA Inventory Placement Program Terms and Conditions](#)[Important Notice for International Sellers](#)[Countries Accepted for Seller Registration](#)[Trademark Usage Guidelines](#)[Loan Agreement](#)[European Value Added Tax \(EU VAT\) Registration Agreement](#)[Professional Selling Plan Insurance Requirements](#)[Product Availability Policy for Manufacturers](#)[Customization Program Terms for Sellers](#)

## Participation Agreement

Welcome to the Amazon.com site (the "Site") and our selling services (the "Services"). Any person who wants to access the Site and use the Services to sell items must accept the terms and conditions of this Participation Agreement without change. BY REGISTERING FOR AND USING THE SERVICES, YOU AGREE TO BE BOUND BY ALL TERMS AND CONDITIONS OF THIS PARTICIPATION AGREEMENT, AND ALL POLICIES AND GUIDELINES OF THE SITE ARE INCORPORATED BY REFERENCE.

Amazon Services LLC ("Amazon," "we," "us," and "our") reserves the right to change any of the terms and conditions contained in this Participation Agreement or any policies or guidelines governing the Site or Services, at any time and in its sole discretion. Any changes will be effective upon posting of the revisions on the Site. All notice of changes to this Participation Agreement will be posted on the Site for thirty (30) days. You are responsible for reviewing the notice and any applicable changes. Changes to referenced policies and guidelines may be posted without notice to you. YOUR CONTINUED USE OF THIS SITE AND THE SERVICES FOLLOWING AMAZON'S POSTING OF ANY CHANGES WILL CONSTITUTE YOUR ACCEPTANCE OF SUCH CHANGES OR MODIFICATIONS. IF YOU DO NOT AGREE TO ANY CHANGES TO THIS PARTICIPATION AGREEMENT, DO NOT CONTINUE TO USE THE SERVICES OR THIS SITE.

**1. Eligibility.** Use of the Site and Services is limited to parties that lawfully can enter into and form contracts under applicable law. For example, minors are not allowed to use the Services. To register, you must provide your real name, address, phone number, e-mail address, and valid credit card information. You represent and warrant that: (a) if you are a business, you are duly organized, validly existing and in good standing under the laws of the country in which your business is registered and that you are registering for the Services within such country; (b) you have all requisite right, power and authority to enter into this Participation Agreement and perform your obligations hereunder; and (c) any information provided or made available by you or your affiliates to Amazon or its affiliates is at all times accurate and complete.

**2. Sellers' Listing Fees and Payment Terms.** Please review the Fee Schedule and Payment Terms contained in the Help section for the Services. All listing fees are in U.S. dollars unless stated otherwise and are incorporated herein by reference. The Fee Schedule and Payment Terms may vary in the future. The Fee Schedule and Payment Terms in effect on the date of sale of the item shall govern the transaction. You should check the fees and terms each time you participate. All fees, including but not limited to subscription plan fees, are payable upon demand on a Visa, MasterCard, American Express, Discover, JCB, or Diners Club credit card.

**3. Applicable Policies and Guidelines.** You agree to abide by the procedures and guidelines—contained in the Help section—for conducting fixed price sales, which are incorporated by reference into, and made part of, this Participation Agreement. The procedures and guidelines contained in the Help section explain the processes and set

Please use the e-mail address associated with your Amazon.com Seller account.

[Contact Us](#)

### Other Help Sites

[Sell on Amazon](#)[Associates Program Help](#)[Amazon Web Services](#)[Publisher and Vendor Help](#)[Ayuda en Español](#)

### Other Help Areas

[Shipping & Delivery](#)[Returns & Refunds](#)[Managing Your Account](#)[Payment, Pricing & Promotions](#)[Ordering](#)[Kindle](#)[Amazon Fire TV](#)[Digital Music, Instant Video & Apps](#)[Gifts, Gift Cards & Registries](#)[Security & Privacy](#)[Author, Publisher & Vendor Guides](#)[Site Features](#)

out acceptable conduct and prohibited practices. We may change these procedures and guidelines in the future, and such changes will be effective immediately upon posting without notice to you. You should refer regularly to the Help section to understand the current procedures and guidelines for participating and to be sure that the items you offer for sale can be sold on the Site. For each item you list on the Site, you will provide to us the state or country from which the item ships. You will provide to us (using the processes and timing that we designate) any requested information regarding shipment, tracking (to the extent available) and order status, and we may make any of this information publicly available. You will not send customers emails concerning shipping confirmation of products you sell (except that to the extent we have not yet enabled functionality for your account that allows payment to be processed on the basis of when shipment occurs, then you will send customers emails confirming shipment of products you sell in a format and manner reasonably acceptable to us). Promptly after shipment of a customer's order (or any portion of the customer's order), you will accurately inform us that the order has been shipped (and, in the case of a customer order that is shipped in more than one shipment, accurately inform us which portion of the order has been shipped), using our standard functionality for communicating such information when we make that functionality available to you ("Confirmation of Shipment"). If you fail to provide Confirmation of Shipment within the time frame specified by us (e.g., 30 days after the date an order was placed), we may in our sole discretion cancel (and/or direct you to stop and/or cancel) any such transaction, and you will stop and/or cancel any such transaction upon such request by us. You will comply with any instructions from the manufacturer, distributor and/or licensor of a product regarding Street Date for Delivery (which means the date, if any, specified by the manufacturer, distributor and/or licensor of a product as the date before which such product should not be delivered or otherwise made available to customers) or the Street Date for Disclosure (which means the date, if any, specified by the manufacturer, distributor and/or licensor of a product as the date before which specified information regarding such product (e.g., title of a book) should not be disclosed publicly).

**4. Amazon's Role.** Amazon provides a platform for third-party sellers ("Sellers") and buyers ("Buyers") to negotiate and complete transactions. Amazon is not involved in the actual transaction between Sellers and Buyers, except as set out in Section 5. As a Seller, you may list any item on the Site unless it is a prohibited item as defined in the procedures and guidelines contained in the Help section, or otherwise prohibited by law. Without limitation, you may not list any item or link or post any related material that (a) infringes any third-party intellectual property rights (including copyright, trademark, patent, and trade secrets) or other proprietary rights (including rights of publicity or privacy); (b) constitutes libel or slander or is otherwise defamatory; or (c) is counterfeited, illegal, stolen, or fraudulent. It is up to the Seller to accurately describe the item for sale. As a Seller, you use the Site and the Services at your own risk.

**5. The Transaction Processing Service.** By registering for or using the Services, you authorize Amazon Payments, Inc. ("Amazon Payments") to act as your agent for purposes of processing payments, refunds and adjustments for Your Transactions (as defined below), receiving and holding Sales Proceeds (as defined below) on your behalf, remitting Sales Proceeds to your bank account, charging your credit card, and paying Amazon and its affiliates amounts you owe in accordance with this Participation Agreement or other agreements you may have with Amazon or its affiliates (collectively, the "Transaction Processing Service"). "Sales Proceeds" means the gross proceeds from any of Your Transactions, including all shipping and handling, gift wrap and other charges, but excluding any taxes separately stated and charged. "Your Transaction" means any sale of your items through the Site. As used in this Section 5, "we," "us" and "our" mean Amazon Payments. Notwithstanding anything to the contrary in this Participation Agreement, Amazon may in its discretion perform the Transaction Processing Services described in this Section 5.

a. The Transaction Processing Service facilitates the purchase of Seller items listed on the Site. Sales Proceeds are credited to a registered Seller's Payment

Account (as defined in Section 5.I. below), and funds are periodically transferred to the Seller's designated bank account ("Seller's Account"). Alternatively, eligible Sellers may opt to purchase an Amazon.com gift certificate with funds from Sales Proceeds to the extent that Amazon offers such an option. When a Buyer instructs us to pay you, you agree that the Buyer authorizes and orders us to commit the Buyer's payment to you (less any applicable fees or other amounts we may collect under this Participation Agreement). You agree that Buyers satisfy their obligations to you for Your Transactions when we receive the Sales Proceeds. Our obligation to remit funds received by us on your behalf is limited to funds that we have actually received less amounts owed to Amazon, subject to chargeback or reversal or withheld for anticipated claims in accordance with this Participation Agreement. The Transaction Processing Service helps facilitate Your Transactions and neither we nor our affiliates are the purchaser of the Seller's goods. Seller will resolve any dispute directly with Buyer or with the assistance of the Amazon.com A-to-z Guarantee and not through the Transaction Processing Service. You must provide us true and accurate information when registering and must maintain and update that information as applicable. We may at any time require you to provide any financial, business or personal information we request to verify your identity. Seller will not impersonate any person or use a name he or she is not legally authorized to use. Seller authorizes us to verify his or her information (including any updated information), to obtain credit reports about Seller in order to approve Seller for use of the Transaction Processing Service and also from time to time while Seller is registered with the Transaction Processing Service (including credit reports about Seller's spouse if Seller lives in a community property state), and to obtain an initial credit authorization from Seller's credit card issuer at time of registration. The Amazon Payments Privacy Notice applies to your use of the Transaction Processing Service.

b. Sales Proceeds can be credited only to bank accounts in the United States or any other country shown as supported by our standard functionality and enabled for your account (which functionality may be modified or discontinued by us at any time without notice), or used to purchase Amazon.com gift certificates (to the extent permitted by Amazon), which purchases are subject to Amazon's Terms and Conditions for Gift Certificates. Sellers may also use the bank account provided to Amazon for the Transaction Processing Service when making retail purchases on the Amazon.com web site, subject to Amazon's Terms and Conditions for Payments from a Bank Account. Sellers waive any rights with respect to the Transaction Processing Service when shipping to an address other than that provided by the Transaction Processing Service.

c. The Transaction Processing Service is generally available seven (7) days per week, twenty-four (24) hours per day, except for scheduled downtime due to system maintenance. We can initiate credits to Seller's Account only on a Business Day when the automated clearinghouses are open for business. For purposes of this Participation Agreement, a "Business Day" is a Monday through Friday, excluding federal banking holidays. We will inform you of each completed transaction using our standard procedures. In addition, you can access your Transaction Processing Service transaction information online in your Payment Account.

d. You may provide refunds or adjustments to Buyers for Your Transactions through the Transaction Processing Service using functionality enabled for your account. This functionality may be modified or discontinued by us at any time without notice and is subject to the limitations in the Help section and the terms of this Participation Agreement. You may not create invoices for Your Transactions.

e. All balances for a given 14-day period will be reflected in the Payment Account summary. We will initiate a credit to Seller's Account on a rolling 14-day cycle ("Payment Date") based on the original date of Seller's registration with the Service or on the next Business Day if the scheduled Payment Date falls on a non-Business Day. If Seller requests a change to the scheduled Payment Date,



the 14-day cycle will be reset to the requested Payment Date. When you either initially provide or later change your bank account information, you must wait 7 days to either (1) request a transfer to Seller's Account or (2) purchase an Amazon.com gift certificate within the 14-day cycle. After 7 days, you may either request transfers to Seller's Account or purchase an Amazon.com gift certificate (if available) at any time within the 7-day cycle via the Payment Account summary page. We will initiate a transfer to Seller's Account on each Payment Date and, based on your preferences, either (1) initiate a transfer to Seller's Account or (2) initiate your purchase of an Amazon.com gift certificate (if available), in either case for the total amount of Sales Proceeds you received from Buyers' authorized payment, less any fees or other amounts we may collect under this Participation Agreement, any refunds, adjustments, or other amounts paid to Buyers in connection with Your Transactions, or for funds you otherwise received since the last Payment Date. The amount of the fees for the Services will be posted to Seller's Payment Account and will be deducted from the balance of credits in the Seller's Payment Account to be remitted to you on the next Payment Date. Without limiting Amazon or Amazon Payments' rights to collect any amounts you owe, including as described in Section 5.j. of this Participation Agreement, Amazon Payments' receipt of Sales Proceeds discharges your obligation to pay applicable fees and other amounts under this Participation Agreement to the extent the Sales Proceeds equal or exceed the fees and other amounts you owe and the Sales Proceeds are applied to the payment of those fees and amounts. When a Seller purchases an Amazon.com gift certificate (if available), funds for Sales Proceeds will be posted to the balance in the Seller's gift certificate account on the Site (the "GC Account").

f. Transfers to the Seller's Account will generally be credited within five Business Days of the date we initiate the transfer. On occasion, we may send Seller a paper check instead of an electronic credit to Seller's Account. We will do so, for instance, if Seller's bank will not accept an electronic credit to Seller's Account.

g. As a security measure, we or our affiliates may, but are not required to, impose transaction limits on some or all Buyers and Sellers relating to the value of any transaction, disbursement, or adjustment, the cumulative value of all transactions, disbursements, or adjustments during a period of time, or the number of transactions per day or other period of time. Neither we nor our affiliates will be liable to Seller: (i) if we do not proceed with a transaction, disbursement, or adjustment that would exceed any limit established by us or our affiliates for a security reason, or (ii) if we or our affiliates permit a Buyer to withdraw from a transaction because the Transaction Processing Service is unavailable following the commencement of a transaction.

h. If we or our affiliates reasonably conclude based on information available to us or our affiliates that Seller's actions and/or performance in connection with the Services may result in Buyer disputes, chargebacks or other claims, then we may, in our sole discretion, delay initiating any remittances and withhold any payments to be made or that are otherwise due to you in connection with the Services or this Participation Agreement until the completion of any investigation(s) regarding any Seller actions and/or performance in connection with this Participation Agreement. We will not be liable to Seller if we act in accordance with the provisions of this Section.

i. All notices will be sent by e-mail or will be posted on the Site or by any other means then specified by us or Amazon. We will send notices to Seller at the e-mail address maintained in our or Amazon's records for Seller. Seller will monitor his or her e-mail messages frequently to ensure awareness of any notices sent by us or Amazon. Seller will send notices to us using the functionality for contacting Amazon provided in our Help pages.

j. We may refuse service to anyone for any reason. We will bear the risk of credit card fraud (i.e., fraudulent purchase arising from the theft and unauthorized use of a third party's credit card information) occurring in connection with Your

Transactions, and Seller will bear all other risk of fraud or loss; provided, that we will not bear the risk of credit card fraud in connection with any of Seller's products (except those products, if any, that are fulfilled using the Fulfillment by Amazon service) that are not fulfilled strictly in accordance with the order information and shipping information that Amazon provides you. Amazon reserves the right to seek reimbursement from Seller if Amazon, in its sole discretion, decide to reimburse Buyer under the terms of the Amazon.com A-to-Z Guarantee, provide a refund to Buyer if Seller cannot promptly deliver the goods, discover erroneous or duplicate transactions, or receive a chargeback from Buyer's credit card issuer for the amount of Buyer's purchase from Seller. We may obtain reimbursement of any amounts owed by Seller to Amazon or us by deducting from future payments owed to Seller, reversing any credits to Seller's Account, charging against gift certificates held in Seller's GC Account (if any) that were purchased with Sales Proceeds, charging Seller's credit card, or seeking such reimbursement from Seller by any other lawful means. You authorize us to use any or all of the foregoing methods to seek reimbursement, including the debiting of your credit card or bank account.

k. We reserve the right, upon termination of this Participation Agreement or Seller's use of the Services, to set off against any payments to be made to Seller, an amount determined by us to be adequate to cover chargebacks, refunds, adjustments or other amounts paid to Buyers in connection with Your Transactions from Seller's Account or GC Account for a prospective three-month period. At the end of such three-month period following termination, we will disburse to Seller any amount not used to offset chargebacks, refunds, adjustments, or such other amounts paid to Buyers, or seek reimbursement from Seller via any of the means authorized in Section 5. j. above for any additional amount required to offset chargebacks, refunds, adjustments, or other amounts paid to Buyers, as applicable.

l. Sales Proceeds will be held in an account with Amazon Payments (a "Payment Account") and will represent an unsecured claim against Amazon Payments. Sales Proceeds are not insured by the Federal Deposit Insurance Corporation. Prior to disbursing funds to you, Amazon Payments may combine Sales Proceeds held with the funds of other users of the Services, invest them, or use them for other purposes permitted by applicable laws. You will not receive interest or any other earnings on any Sales Proceeds. To the extent required by applicable laws, Amazon Payments will not use any funds held on your behalf for its corporate purposes, will not voluntarily make such funds available to its creditors in the event of bankruptcy or for any other purpose, and will not knowingly permit its creditors to attach such funds.

m. If there is no activity (as determined by us) in connection with your Payment Account for the period of time set forth in applicable unclaimed property laws and we hold Sales Proceeds on your behalf, we will notify you by means designated by us and provide you the option of keeping your Payment Account open and maintaining the funds in your Payment Account. If you do not respond to our notice(s) within the time period we specify, we will send the funds in your Payment Account to your state of residency, as determined by us based on the information in your Payment Account. If we are unable to determine your state of residency or your Payment Account is associated with a foreign country, your funds may be sent to the State of Delaware.

**6. Amazon Reservation of Rights.** Amazon retains the right to determine the content, appearance, design, functionality and all other aspects of the Site and the Services (including the right to re-design, modify, remove and alter the content, appearance, design, functionality, and other aspects of the Site and the Service and any element, aspect, portion or feature thereof, from time to time), and to delay or suspend listing of, or to refuse to list, or to de-list, or to require Seller not to list, any or all products in our sole discretion. We may in our sole discretion withhold for investigation, refuse to process, restrict shipping destinations for, stop and/or cancel any of Your Transactions.



You will stop and/or cancel orders of your products if we ask you to do so (provided that if you have transferred your products to the applicable carrier or shipper, you will use commercially reasonable efforts to stop and/or cancel delivery by such carrier or shipper). You will refund any customer (in accordance with this Participation Agreement) that has been charged for an order that we stop or cancel.

**7. Amazon Participation.** Employees of Amazon and its affiliates are permitted to participate in their personal capacity (i.e., not as Amazon employees, representatives, or agents of Amazon or its affiliates) in the transactions conducted through this Site (unless they have confidential information about a particular item). Employees of Amazon and its affiliates, when participating in any transaction in their personal capacity, are subject to this Participation Agreement and the same procedures and guidelines contained in the Help section as any Buyer or Seller on this Site.

#### **8. Your Transactions**

a. For sales where a Seller lists goods at a fixed price ("fixed price sales"), the Seller is obligated to sell the goods at the listed price to Buyers who meet the Seller's terms. By listing an item in a fixed price sale, you represent and warrant to prospective Buyers that you have the right and ability to sell, and that the listing is accurate, current, and complete and is not misleading or otherwise deceptive.

b. For fixed price sales, Seller will determine the purchase price for each item he or she lists on the Site via and subject to Amazon.com's standard functionality for listing the purchase price, provided that Seller must abide by the same procedures and guidelines contained in the Help section with respect to pricing.

**9. Your Obligation.** By entering into this Participation Agreement and posting a listing for fixed price sale, you agree to complete the transaction as described by this Participation Agreement. You acknowledge that by not fulfilling these obligations, your action or inaction may be legally actionable.

**10. Seller Taxes.** You agree that it is the Seller's responsibility to determine whether Seller Taxes apply to the transactions and to collect, report, and remit the correct Seller Taxes to the appropriate tax authority, and that Amazon is not obligated to determine whether Seller Taxes apply and is not responsible to collect, report, or remit any sales, use, or similar taxes arising from any transaction, except to the extent Amazon Payments expressly agrees to receive taxes or other transaction-based charges in connection with tax calculation services made available by Amazon and used by Seller. "Seller Taxes" means any and all sales, goods and services, use, excise, import, export, value added, consumption and other taxes and duties assessed, incurred or required to be collected or paid for any reason in connection with any advertisement, offer or sale of products by you on or through the Site, or otherwise in connection with any action, inaction or omission of you or any of affiliate of yours, or any of your or their respective employees, agents, contractors or representatives.

**11. Returns and Refunds.** Subject to Section 5.d., for all of your products that are not fulfilled using the Fulfillment by Amazon service, you will accept and process returns, refunds and adjustments in accordance with this Participation Agreement and the Amazon return policies published on the Site at the time of the applicable order, and we may inform customers that these policies apply to your products. Subject to Section 5.d., you will determine and calculate the amount of all refunds and adjustments (including any taxes, shipping and handling or other charges) or other amounts to be paid by you to Buyers in connection with Your Transactions, using functionality we enable for your account, and will route all such payments through Amazon Payments. We will provide any such payments to the Buyers (which may be in the same payment form originally used to purchase your product), and you will reimburse Amazon Payments for all amounts so paid. We may offset such payments against any amounts to be remitted or paid by Amazon Payments or its affiliates to Seller under this Participation Agreement or seek reimbursement from Seller via any of the means authorized in Section 5.j. For all of your products that are fulfilled using the Fulfillment

by Amazon service, the Amazon return policies published on the Site at the time of the applicable order will apply and you will comply with them. You will promptly provide refunds and adjustments that you are obligated to provide under the applicable Amazon return policies and as required by law, and in no case later than thirty (30) days after the obligation arises.

**12. Password Security.** Your password may be used only to access the Site, use the Services, electronically sign Your Transactions, and review your completed transactions. You are solely responsible for maintaining the security of your password. You may not disclose your password to any third party (other than third parties authorized by you to use your account) and are solely responsible for any use of or action taken under your password on this Site. If your password is compromised, you must change your password.

**13. Illegal Activity**

**a. Compliance with Laws; Fraud.** The Site and Services may be used only for lawful purposes and in a lawful manner. You agree to comply with all applicable laws, statutes, and regulations. You may not register under a false name or use an invalid or unauthorized credit card. You may not impersonate any participant or use another participant's password(s). Such fraudulent conduct is a violation of federal and state laws. Fraudulent conduct may be reported to law enforcement, and Amazon will cooperate to ensure that violators are prosecuted to the fullest extent of the law.

**b. Investigation.** Amazon has the right, but not the obligation, to monitor any activity and content associated with this Site and investigate as we deem appropriate. Amazon also may investigate any reported violation of its policies or complaints and take any action that it deems appropriate. Such action may include, but is not limited to, issuing warnings, suspension or termination of service, denying access, and/or removal of any materials on the Site, including listings. Amazon reserves the right and has absolute discretion to remove, screen, or edit any content that violates these provisions or is otherwise objectionable.

**c. Disclosure of Information.** Amazon and Amazon Payments also reserve the right to report any activity that either of them suspects violates any law or regulation to appropriate law enforcement officials, regulators, or other third parties. In order to cooperate with governmental requests, to protect Amazon's or Amazon Payments' systems and customers, or to ensure the integrity and operation of Amazon's or Amazon Payments' business and systems, Amazon or Amazon Payments may access and disclose any information it considers necessary or appropriate, including but not limited to user contact details, IP addressing and traffic information, usage history, and posted content.

**14. Privacy; Use of Amazon Transaction Information.**

**a.** Read the Amazon.com Privacy Notice and the Amazon Payments Privacy Notice. These Privacy Notices may be changed by Amazon and its affiliates in the future. You should check the Privacy Notices frequently for changes. Amazon and its affiliates may communicate with you in connection with your listings, sales, and the Services, electronically and in other media, and you consent to such communications regardless of any "Customer Communication Preferences" (or similar preferences or requests) you may have indicated on the Site or by any other means. When you use the Services, some personally identifiable information about you, including your feedback and the e-mail address associated with your account, may be displayed on the Site and may be viewed by potential buyers.

**b.** You will not, and will cause your affiliates not to, directly or indirectly disclose, convey or use any order information or other data or information acquired by you or your affiliates from Amazon or its affiliates (or otherwise) as a result of the Participation Agreement, the transactions contemplated hereby or the parties' performance hereunder (collectively, "Amazon Transaction Information").

except you may disclose this information as necessary for you to perform your obligations under this Participation Agreement, provided that you ensure that every recipient uses the information only for that purpose and complies with the restrictions applicable to you related to that information. The terms of this Section 14.b. do not prevent you from using other information that you obtain separately from the Amazon Transaction Information, even if such information is identical to Amazon Transaction Information, provided that you do not target communications on the basis of the intended recipient being an Amazon.com user.

**15. No Warranties.** THE SITE AND THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS. NEITHER AMAZON NOR AMAZON PAYMENTS MAKE ANY OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION:

- a. THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT;
  - b. THAT THE SITE OR THE SERVICES WILL MEET YOUR REQUIREMENTS, WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, OR OPERATE WITHOUT ERROR;
  - c. THAT THE INFORMATION, CONTENT, MATERIALS, OR PRODUCTS INCLUDED ON THE SITE WILL BE AS REPRESENTED BY SELLERS, AVAILABLE FOR SALE AT THE TIME OF FIXED PRICE SALE, LAWFUL TO SELL, OR THAT SELLERS OR BUYERS WILL PERFORM AS PROMISED;
  - d. ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING OR USAGE OF TRADE; AND
  - e. ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY IN TORT, WHETHER OR NOT ARISING FROM THE NEGLIGENCE OF AMAZON OR AMAZON PAYMENTS.
- TO THE FULL EXTENT PERMISSIBLE UNDER APPLICABLE LAW, AMAZON AND AMAZON PAYMENTS DISCLAIM ANY AND ALL SUCH WARRANTIES.

**16. General Release.** BECAUSE AMAZON AND AMAZON PAYMENTS ARE NOT INVOLVED IN TRANSACTIONS BETWEEN BUYERS AND SELLERS OR OTHER PARTICIPANT DEALINGS, IF A DISPUTE ARISES BETWEEN ONE OR MORE PARTICIPANTS, EACH OF YOU RELEASE AMAZON AND AMAZON PAYMENTS (AND THEIR RESPECTIVE AGENTS AND EMPLOYEES) FROM CLAIMS, DEMANDS, AND DAMAGES (ACTUAL AND CONSEQUENTIAL) OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, SUSPECTED AND UNSUSPECTED, DISCLOSED AND UNDISCLOSED, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES.

**17. Indemnity/Limitation of Liability.**

- a. **Indemnity and Defense.** You will defend, indemnify and hold harmless Amazon, Amazon Payments, and each of their affiliates (and their respective employees, directors, agents and representatives) from and against any and all claims, costs, losses, damages, judgments, penalties, interest and expenses (including reasonable attorneys' fees) arising out of any Claim that arises out of or relates to: (i) any actual or alleged breach of your representations, warranties, or obligations set forth in this Participation Agreement; or (ii) your own website or other sales channels, the products you sell, any content you provide, the advertisement, offer, sale or return of any products you sell, any actual or alleged infringement of any intellectual property or proprietary rights by any products you sell or content you provide, or Seller Taxes or the collection, payment or failure to collect or pay Seller Taxes. For purposes hereof: "Claim" means any claim, action, audit, investigation, inquiry or other proceeding instituted by a person or entity.
- b. **Limitation of Liability.** NEITHER AMAZON NOR AMAZON PAYMENTS WILL BE LIABLE FOR ANY DAMAGES OF ANY KIND, INCLUDING WITHOUT

LIMITATION DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, AND CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE PARTICIPATION AGREEMENT, THE SITE, THE SERVICES, THE TRANSACTION PROCESSING SERVICE, THE INABILITY TO USE THE SERVICES OR THE TRANSACTION PROCESSING SERVICE, OR THOSE RESULTING FROM ANY GOODS OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH THE SERVICES.

**18. Applicable Law.** The laws of the state of Washington govern this Participation Agreement and all of its terms and conditions, without giving effect to any principles of conflicts of laws or the Convention on Contracts for the International Sale of Goods. **Each party consents that any dispute or claim relating in any way to this Participation Agreement or your use of the Services or Transaction Processing Services will be resolved by binding arbitration as described in this paragraph, rather than in court,** except that you may assert claims in a small claims court in King County, Washington if your claims qualify and you or we may bring suit in the state or Federal courts in King County, Washington to enjoin infringement or other misuse of intellectual property rights. **There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages), and must follow the terms of this Participation Agreement as a court would.** To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to our registered agent, CSC Services of Nevada, Inc., 2215-B Renaissance Drive, Las Vegas, NV 89119. The arbitration will be conducted by the American Arbitration Association (AAA) under its rules, including the AAA's Supplementary Procedures for Consumer-Related Disputes. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules. We will reimburse those fees for claims totaling less than \$10,000 unless the arbitrator determines the claims are frivolous. Likewise, Amazon will not seek attorneys' fees and costs from you in arbitration unless the arbitrator determines the claims are frivolous. You may choose to have the arbitration conducted by telephone, based on written submissions, or in person in the county where you live or at another mutually agreed location. **Each party agrees that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action.** If for any reason a claim proceeds in court rather than in arbitration **each party waives any right to a jury trial.**

**19. Disputes.** Because neither Amazon nor Amazon Payments is the agent of Seller and is not the agent of Buyer for any purpose, except as set out in Section 5, neither Amazon nor Amazon Payments will act as either party's agent in connection with resolving any disputes between participants related to or arising out of any transaction. Amazon urges Sellers and Buyers to cooperate with each other to resolve such disputes.

**20. Your Grant.** By entering into this Participation Agreement and listing an item, you grant us a royalty-free, non-exclusive, worldwide, perpetual, irrevocable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of, and otherwise commercially or non-commercially exploit in any manner, any and all of the content you submit to Amazon and its affiliates, and to sublicense the foregoing rights to our affiliates and operators of any website or other online point of presence (other than the Site) through which the Site and/or products or services available thereon are syndicated, offered, merchandised, advertised or described; provided, however, that we will not alter any of your trademarks (i.e., trademarks of yours that you provide to us in non-text form for branding purposes that are separate from and not embedded or otherwise incorporated in any product specific information or materials) from the form provided by you (except to re-size trademarks to the extent necessary for presentation, so long as the relative proportions of such trademarks remain the same) and will comply with your removal requests as to specific uses of your trademarks (provided you are unable to do so using standard functionality

made available to you via the Site or Services); provided further, however, that nothing in this Participation Agreement will prevent or impair our right to use without your consent the content and any other materials provided by you, to the extent that such use is allowable without a license from you or your affiliates under applicable law (e.g., fair use under copyright law, referential use under trademark law, or valid license from a third party). You represent and warrant that you own or otherwise control all of the rights to the content you submit to Amazon and its affiliates, and that the use of such materials by Amazon and its affiliates will not infringe upon or violate the rights of any third party.

**21. Termination.** Amazon, in its sole discretion, may terminate this Participation Agreement, access to the Site or the Services, or any current fixed price sales immediately without notice for any reason. Amazon, in its sole discretion, also may prohibit any Seller from listing items for fixed price sales.

## **22. General Provisions**

**a. Entire Agreement.** This Participation Agreement, including any terms and conditions incorporated herein by reference, and the general terms and conditions of the Site, including but not limited to the Privacy Notices and Conditions of Use, constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes and cancels all prior and contemporaneous agreements, claims, representations, and understandings of the parties in connection with the subject matter hereof.

**b. No Agency; Third-Party Beneficiary.** Subject to the first paragraph of Section 5, you and each of Amazon and Amazon Payments are independent contractors and nothing in this Participation Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between us. Nothing expressed or mentioned in or implied from this Participation Agreement is intended or shall be construed to give to any person other than the parties hereto any legal or equitable right, remedy, or claim under or in respect to this Participation Agreement. This Participation Agreement and all of the representations, warranties, covenants, conditions, and provisions hereof are intended to be and are for the sole and exclusive benefit of Amazon, Amazon Payments, you, and relying Buyers or Sellers.

**c. Severability.** If any provision of this Participation Agreement shall be deemed unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from these terms and conditions and shall not affect the validity and enforceability of any remaining provisions.

**d. No Waiver.** Neither Amazon nor Amazon Payments will be considered to have waived any of its rights or remedies described in this Participation Agreement unless the waiver is in writing and signed by the relevant party. No delay or omission by Amazon or Amazon Payments in exercising its rights or remedies will impair or be construed as a waiver. Any single or partial exercise of a right or remedy will not preclude further exercise of any other right or remedy. Amazon's or Amazon Payments' failure to enforce the strict performance of any provision of this Participation Agreement will not constitute a waiver of either party's right to subsequently enforce such provision or any other provisions of this Participation Agreement.

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